

RESTITUTION and ADJC Youth:

A Victim's Guide to Compensation

What is restitution?

Restitution is an offender's compensation to the victim of his or her crime.

Is restitution a monetary payment?

Restitution can take many forms, including a monetary payment or work for a charity chosen by the victim.

Why do courts order restitution?

Restitution is a victim's right, an avenue for justice, and a way to hold the offender responsible for the victim's losses. It allows the courts to acknowledge and direct compensation to victims of crime.

How do I receive court-ordered restitution?

There are several options for victims to enforce the restitution judgments against juveniles. One is to have the restitution order entered against the parents, thereby holding someone who is not judgment proof responsible for making the victim whole. If the restitution has already been entered against the juvenile, the "show cause" hearing and garnishment may work. Failing that, an order entered against the defendant when he turns eighteen may be the only recourse.

While in a secure facility, the juvenile's wage-earning opportunities are limited. Upon release into the community, repayment of any outstanding balance for court-ordered restitution is included in the juvenile's conditions of release. A Parole Officer monitors these conditions. Payments toward court-ordered restitution are submitted to the County Clerk's Office for distribution to the victim.

Court-ordered restitution and other orders affecting the victim can be traced and monitored on behalf of the victim. Concerns about restitution should be directed to the Victims' Rights Office.

OTHER METHODS OF OBTAINING COMPENSATION—CIVIL LAWSUITS

"The court may order one or both of the juvenile's custodial parent to make restitution to the victim of the offense for which the juvenile was adjudicated delinquent." Ariz. Rev. Stat. 8-344 (c). Ordering the juvenile defendant's parents to pay the restitution is well within the court's discretion, but is not automatic; victims must ask for it affirmatively. This is an important step in ensuring that victims can collect the restitution due them. Juveniles are often judgment proof, whereas parents often own real or personal property that can be the subject of restitution liens. Furthermore, according to the statute, the court "shall not consider the ability of the juvenile's parents to pay restitution before making a restitution order."

Even if the juvenile court orders restitution, you can go to civil court and file a civil lawsuit against the juvenile and his or her parents.

The advantage: A parent who is not ordered to pay restitution in juvenile court may be held liable in civil court. In addition to any restitution that the juvenile court orders the juvenile to pay, parents are liable for up to \$10,000 per incident in civil court.

The disadvantage: Filing a civil lawsuit may require the services of a private attorney. Also, if the juvenile is not ordered to pay a significant amount, you may lose money in the lawsuit after paying the attorney's fees.

OTHER METHODS OF OBTAINING COMPENSATION—RESTITUTION LIENS

In addition to enforcing the restitution order, you may place a restitution lien on any of the juvenile's property. A lien gives the lien holder a claim on the juvenile's property by ensuring that the juvenile pays his or her debts before selling or

transferring property. Once the restitution lien is filed, the juvenile will be unable to transfer title of the property until restitution is fully paid.

A restitution lien may be filed against any property owned by the juvenile or the accountable parent. It can also be placed on property that the juvenile did not own at the time of the sentencing. For example, if property is acquired later and put under the name of the juvenile or the responsible parent, that property can be included in the lien.

When more than one juvenile is responsible for the same loss to you, the court may enter judgments against the juveniles on different days. When the full amount of money owed has been paid, you must record a notice of satisfaction for all juveniles against whom judgments were entered for the same loss.

If you need legal advice or representation, you should consult with a private attorney or contact the lawyer referral service or community legal service in your county.

How can restitution orders be enforced?

A.R.S. 13-810 deals with the consequences of nonpayment of restitution. Accordingly, if the defendant defaults on the payment, the victims have options. "The court...on petition of any person entitled to restitution pursuant to a court order... shall require the defendant to show cause" (A.R.S. 13-810-a). If the court finds that the defendant willfully chose not to pay, the court shall find contempt and may 1) order the defendant incarcerated until the restitution is paid, 2) revoke the defendant's probation or parole or 3) enter an order for garnishment in accordance with A.R.S. 13-812. Additional support for this approach is found in rule 26.12 9c) (4) of the Rules of Criminal Procedure. For juvenile defendants, this is usually the end of the road, as few juveniles earn enough money to justify a garnishment order. That is one reason it is important to have the restitution assigned to the parents of the juvenile.

Enforcing orders assigned to parents and on juveniles who are aging out.

If the restitution is assigned to the parent of the juvenile in accordance with A.R.S. 8-344 (c), then the same rules above come into play. It can be hoped that the parents do earn enough to justify an order of garnishment. For defendants who have aged out, the solution is similar. The juvenile court is to retain jurisdiction for 6 months after the defendant turns eighteen. This is for the purpose of entering judgment in favor of each person who is entitled to restitution for any unpaid amounts. This judgment can be enforced and renewed as any civil judgment. Ariz. Rev. Stat. 8-344 (d) (e). Alternatively, a victim can pursue a lien.

WHAT INFORMATION MUST BE INCLUDED IN THE RESTITUTION LIEN?

"Any person entitled to restitution pursuant to a court order may file in accordance with this section a restitution lien." Ariz. Rev. Stat. 13-806. a restitution lien is available immediately to any person who is owed restitution pursuant to court order. It is not necessary to have a "show cause" hearing or to pursue a garnishment order. If the defendant (or his parent in cases where the restitution is assigned to the parents) owns real or personal property, the victim is entitled to a lien on it. The requirements for the lien are fairly simple and require that they be signed either by the attorney representing the state in the criminal action or by a magistrate. Additionally, the lien must set for the following information; 1) the name and date of birth of the defendant, 2) the address or place of business, 3) the criminal proceeding under which the lien is filed, including the court, the title of the action and the file number, 4) the name and address of the person entitled to the restitution, 5) a statement that the lien is being filed according to this section (A.R.S. 13-806), 6) the amount of restitution owed will change and that the clerk of the court shall maintain a record of the outstanding balance.

To file a lien against real property (real estate), the lien must be filed with the county recorder of the county in which the assets are located. To file a lien against a motor vehicle, the lien must be filed with the department of transportation motor vehicle division. To file a lien against any other personal property, the lien must be filed with the secretary of state. There is no filing fee for filing this type of lien.

The lien will become a public document. If you do not want your address to become public in this manner, you may want to consider renting a post office box.

HOW DO I FILE A RESTITUTION LIEN?

To file a restitution lien, you will need two forms from the Clerk of the Court—the Restitution Lien form and a Notice form.

The first step: A juvenile court judicial officer must sign both forms. You may give the forms along with a self-addressed, stamped envelope, to a court clerk, who will get them signed and mail them to you in approximately two weeks. If you are placing several liens at different agencies, it may be necessary to provide the Court Clerk's Office with additional copies of the unsigned Lien and Notice forms so the clerk can obtain a judicial officer's signature on each one.

The next step: After you have received the signed Lien and Notice forms, you may take them to any of the agencies listed below to file the lien. You must file both forms with the appropriate government agency, depending on what type of property you include in the lien. An agency may also request a copy of the notarized Judgment Form.

A.R.S. 13-806 (A) states there is no fee or charge for filing a restitution lien.

AT WHICH AGENCIES MAY I FILE THE RESTITUTION LIEN?

MOTOR VEHICLE

The Motor Vehicles Department will not file a lien unless the department knows the vehicle belongs to the correct person. Governmental agencies are prohibited from releasing motor vehicle descriptive information to the public. At a minimum, you must provide the juvenile's last known address and the make and year of the vehicle.

REAL PROPERTY (Real Estate)

A restitution lien on real property is filed with the County Recorder in the county in which the property is located. You do not need to know if the defendant owns real property to file the restitution lien; however, the staff of the Recorder's Office can assist you in researching real property owned by the defendant.

PERSONAL PROPERTY

A restitution lien on personal property other than motor vehicles is filed with the Secretary of State's Office. The Secretary of State's Office will place a lien against the defendant's assets until the lien is paid. You do not need to know if the juvenile owns personal property to file a lien; however, the Secretary of State's Office can help you search its records for personal property owned by the juvenile.

WHO CAN HELP ME OBTAIN RESTITUTION?

If the juvenile is in the custody of the Arizona Department of Juvenile Corrections (ADJC), the ADJC Victims' Rights Office can help you address difficulties that may arise during the process of obtaining restitution.

Once the juvenile has been released from ADJC jurisdiction, either because they have turned 18 years of age, or because they have been granted a Discharge, the department cannot advise or assist you in collecting restitution. Questions about any outstanding restitution should be directed to the Juvenile Court. If you need legal advice and/or representation, you may consult an attorney or contact the lawyer referral service or community legal service in your county.

The County Juvenile courts cannot help you obtain relief, but when you file the Restitution Lien and Notice forms with court clerks, you may ask them about the next step you should take.

RESTITUTION ORDERS

When a juvenile is adjudicated delinquent for committing an offense against you, the judge can file a Restitution Order to require the juvenile offender to compensate you.

A Restitution Order specifies the type of compensation the juvenile is ordered to provide. To determine this, the judge can consider what you feel would be appropriate compensation for the harm you have suffered.

The juvenile makes restitution payments to the county clerk of the juvenile court. The court then directs the payments to you. If there are previous outstanding Restitution Orders, payments are distributed first to the victim with the oldest court order.

The Victims' Rights Office can help you obtain a copy of the Restitution Order, track the order, ensure the restitution is actively monitored, stay informed of the youth's efforts to address restitution. Upon request, the Victims' Rights Office can facilitate discussions between the victim and offender to address concerns about restitution.

WHAT IF THE JUVENILE IS RELEASED FROM ADJC CUSTODY BEFORE PAYING RESTITUTION IN FULL?

Wait for automatic conversion (civil judgment)

When a juvenile offender turns 18, the court will automatically enter a "civil judgment" against the juvenile for any restitution still owed. Once recorded, the judgment will appear on the juvenile's credit rating.

Advantages: One benefit of a civil judgment is that it is enforceable throughout the United States, even if the juvenile moves out of state. Another benefit is the ability to enforce the judgment by garnishing the juvenile's wages.

For more information, contact:

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